National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL
Advice Memorandum

DATE: May 11, 1995

TO: Saundria Bordone, Regional Director, Region 25

FROM: Barry J. Kearney, Acting Associate General Counsel Division of Advice

SUBJECT: Bridgestone/Firestone, Inc., Case 25-CA-23416; Rubber Workers and Locals 7 et al. Cases 25-CB-7569-1 through -7 Amended

530-6033-7000, 530-6067-0150, 530-6067-2020, 530-6067-2090, 530-6067-4001-8700, 530-8040, 554-1433-6700, 554-1433-6750, 554-1467-0180, 554-1467-1800, 554-1467-3500, 554-1467-6000

The Region submitted these Section 8(a)(1) and (5) and Section 8(b)(1)(A) and (3) cases for advice on issues arising out of the parties' negotiations for a new contract. The issues in both CA and CB cases include the primary allegation: whether either party engaged in surface bargaining. Each set of charges also alleges each party's refusal to furnish certain information. In addition, the Union's charge raises issues regarding whether the parties were at impasse when the Employer implemented in part its final offer and whether the Employer unlawfully proposed changes to the existing contract that were too numerous, insisted on bringing all issues, both master and local, to the master table for resolution, and/or engaged in direct dealing. The Employer's charge raises issues concerning whether the Union unlawfully insisted on a pattern agreement and/or an expansion of the bargaining unit by four plants. Also submitted is whether the Union unlawfully introduced racial and national origin prejudice into the bargaining process.

FACTS

Background

Bridgestone/Firestone, Inc. (the Employer) and the United Rubber, Cork, Linoleum & Plastic Workers of America (the Union) and its local unions have had a long history of collective bargaining. The six facilities whose employees are represented by the Union and its separate locals in a multi-location unit are:

Akron, OH (research and office)	Local No. 7
Decatur, IL (tire plant)	Local No. 713
Des Moines, IA (agricultural tires)	Local No. 310
Noblesville, IN (Industrial products)	Local No. 138
Oklahoma City, OK (tire plant)	Local No. 998
Russellville, AR (Tube company)	Local No. 884

For about 30 years, the Employer and the Union have been parties to agreements covering multiple facilities and local unions. The bargaining unit in this case consists of the employees located at all six facilities. In the past, in addition to the master agreement, the local unions and local plants have negotiated separate supplements containing provisions specific to each facility. Historically, the parties have negotiated these supplements concurrent with, or subsequent to, the master negotiations. In 1991, the parties instead agreed to start local negotiations before the master negotiations with the objective of concluding them, at the latest, at the conclusion of master negotiations. While the parties achieved this objective at one facility, elsewhere the parties failed to complete the local negotiations on time.

In their 1991 negotiations, the parties agreed, in a side letter (Letter "H"), that they would meet in advance of the 1994 negotiations to discuss the feasibility of the completing the negotiations of the local supplements before the master agreement.

As detailed below, the parties convened that meeting in August 1993.

Throughout the parties' bargaining relationship, the parties' voluntary participation in a "chain" bargaining arrangement with two other industry employers has guided their negotiations. Until the present, the members of the chain were: Goodyear, Uniroyal/Goodrich/Michelin, and Bridgestone/Firestone.(1) Their master agreements had the same expiration date; therefore, negotiations at all three companies occurred simultaneously. Under this practice, about two weeks before the expiration date of the master agreements, the Union would announce the company that it had chosen as the "target" company. The two other companies would rely on that company's contract as the pattern for their own agreements with the Union. In 1991 when the last master agreement negotiations occurred, the Employer had been the "target" company.

Prelude to 1994 Negotiations

The expiration date of the 1991-1994 agreement was April 24, 1994. In August 1993, as the parties had agreed in Letter H, the Employer's vice president for human resources, Charles Ramsey, and the Union, represented by its International coordinator, John Sellers, met to discuss the upcoming negotiations for a renewed agreement and any pending issues. Neither of them personally had participated in the 1991 negotiations. Ramsey asked about the process and timing of the negotiation of the local supplements. Sellers replied that the Union would encourage the Locals to do as much as possible to negotiate their supplements before, or concurrent with, the master negotiations.

In a letter dated November 16, 1993, Ramsey informed Sellers that, while recognizing the convenience of negotiating local supplements at each plant, there was only one bargaining unit consisting of the six plants. He stated that, because the Employer was not legally required to negotiate the supplements at the local level, in the upcoming negotiations, it would require that all of the local negotiations be completed before the conclusion of the master negotiations. If issues could not be resolved on the local level, the letter stated, they would be dealt with at the "Master table." Ramsey wrote: "[I]t is our hope that local negotiations can be concluded prior to Master bargaining." He closed the letter as follows:

Since this represents a change in how we have previously bargained, we wanted you to know our position as early as possible.

In a letter dated December 2, 1993, Sellers replied:

I share your legal opinion regarding the scope of the appropriate unit. However, the parties also have a 30+ year history of bargaining on a supplemental basis. We believe this approach has worked well and are not desirous of arbitrarily abandoning it.

We are, however, interested in a speedy resolution of all issues. I see no point in elevating procedural issues above substantive ones. Accordingly we are willing to meet on any open issues. This willingness, however, should not be interpreted by you as acceptance of your position. If we are unable to resolve all supplemental issues by the time master issues are concluded, we will have to address the consequences at that time.

In early January 1994,(2) Ramsey contacted the Union to set up a meeting to discuss the Employer's ideas and the need for negotiations. On January 13, Ramsey, leading the Employer's negotiating team, met with the Union and presented a slide show on the Employer's goals for negotiations, entitled "Compelling Need to Change." While the slides did not show proposed contract language, they specifically addressed the changes to wages, benefits and working conditions that the Employer would propose. In this presentation, the Employer showed that, since 1990, it had accumulated $911 million in losses (through 1993) and was $2.3 billion in debt. It had also spent a total of $1.2 billion for capital investments in the business. It stated that its production costs were higher than its competitors and its productivity rates were lower. The Employer attributed this competitive disadvantage to difficulties with: productivity and flexibility, plant capacity not utilized and wage and benefit costs. The remaining 35 slides previewed, item by item and in detail, the Employer's proposal, which the Employer gave to the Union in writing two weeks later.

At this time, the Employer did not ask the Union to respond to any of the issues raised by the slide show, nor did the Union offer any opinions on the issues. The Employer invited the Union to examine the data used to support the analysis presented. In addition, the Employer offered to make this presentation to any locals that were interested. The Employer presented the slides

to two of the locals.

On January 27, the Employer sent the Union its complete proposal, which was in the form of a totally re-written agreement. On February 15, in response to the Union's request to show what its proposal would change in the existing agreement, it sent the Union a version of its proposal that was annotated to the existing agreement. In February, the Employer also sent local supplement proposals to each Local. At that time some of the Locals and local plant management began negotiations; others did not. By April 15, when the Employer removed the local issues to the master table, none of the locals had concluded an agreement with the local plant management.

The Negotiations

1. The talks get underway

Between March 21 and July 12, the parties met for a total of 25 days in 46 negotiating sessions at a rate of about two sessions per day. In the first session, the Union's President, Ken Coss, officially commenced the talks. He told the Employer of the Union's commitment to pattern bargaining and of its expectation that the Employer would follow the pattern of the target company, which a Union committee would choose in the next few weeks. Ramsey, acknowledging the bargaining history, said that any pattern contract would need to meet the Employer's competitive needs. Otherwise, he said, there would be a problem. Chief Union negotiator Sellers, noting that the Employer's proposal contained numerous changes to the existing agreement, asked the Employer to take off the table any part of the proposal that it did not need. Ramsey responded that, as of that day, the parties needed to address everything in the proposal.

On March 22 the Union presented its proposal in the form of an outline of changes to the sections of the existing agreement needing change. The proposal included increases in wages and benefits, the addition of four plants to the bargaining unit, and the elimination of any reference to the Employer having the option of going to a seven-day schedule in its operations. The Union specified those parts of the existing agreement that it wanted to keep.

On March 23, the Employer formally presented its proposal, which the Union had had since February. The Employer showed various charts and graphs to justify its demands. The Employer focused most of its attention on the three tire plants in Decatur, Des Moines, and Oklahoma City. Ramsey continued this presentation on the next day, concentrating on performance-based pay, which would link cost-of-living (COLA) increases to productivity. The Union objected that a performance-based pay system would not be fair to the employees and would not necessarily achieve the Employer's goals. For the next several sessions through April 5, the Employer continued to present its proposals, using slides to illustrate its objectives. Throughout the slide presentation, the parties exchanged opinions and ideas on the Employer's proposed changes. On March 28, for example, the parties discussed employee involvement teams and the term of an agreement, which the Employer had proposed to be five years. The Union opposed anything more than a three-year duration. Union negotiator Sellers stated that three years was in keeping with the pattern in the chain. Employer negotiator Peter Schofield asked whether, if Goodyear were the target company, Goodyear would accept a six-year term. Sellers replied that no one on the Union side would agree. He added: "We will decide what the pattern is." (3)

Throughout their negotiations, the Union protested the breadth of the Employer's proposal and tried to get the Employer to narrow the issues between the parties. In the March 31 session, for example, while discussing whether the Employer's Pension & Insurance expert should attend the next session, the following exchange took place:

Sellers:We recognize that in order to make your proposals work, it would take cooperation from this side. You said you couldn't work without Union cooperation. The tone of your proposals get you the kind of response you just got. Why go to such great lengths to rub our nose in it. You did away with all of the mutual Agreement. . . . Whatever has happened since '91, you better quit dancing and get to the purposes of these negotiations.

Ramsey:We feel that there is a responsibility of management on how it is to run our business and I think that's right. Somebody needs to make the first call . . . for whatever reason, we can go out of business in 3 tire plants. We need to take that giant step of evolution and make things happen. At some point, we have to say "we have to move forward."

Sellers:I don't disagree at all . . . we have to have a mechanism to move forward. * * *

Again, my problem is that I still don't have a clue if you're telling me everything out there you have to have . . . we have a big problem.

After more discussion,

Ramsey:Every issue we have talked about needs to be talked about . . . . I think you take the same approach as if it was your business.

On about April 5, the Union presented its initial P & I proposal, which it had given to the Employer on March 31. Discussions concerning these initial proposals continued through April 15. On health insurance coverage, the existing plan is a network system, which was instituted in 1991. In the current bargaining, the Employer proposed increasing the deductible, introducing co-payments by employees, and charging premiums, although decreasing the premiums for dental coverage. On the other hand, the Union proposed to keep the plan and increase the services covered by it. On life insurance, the Union would increase benefits for the employees, retirees and their beneficiaries. The Employer proposed that the life insurance plan stay the same, along with accident and sickness (A/S) benefits and vision care coverage. The Employer proposed to divert the funds that it currently paid into the supplemental workers compensation plan from that plan to its proposed performance-based pay plan, to which the Union was opposed. The Union proposed increasing A/S and vision benefits and pension benefits. On pensions, the Employer proposed a $30 per month pension credit for service prior to May 1994 and $27 per month for service thereafter. The Union proposed increases in pensions to a monthly credit of $50 while making it easier for employees to become eligible for pensions.

In the interim, on April 11, Sellers called Ramsey to announce that the Union had chosen Goodyear as the target company in the chain negotiations. Ramsey did not comment on that announcement. In a press release issued at that time, the Union stated that it would concentrate on Goodyear to set the 1994 pattern agreement and employees at other companies would use it in their own negotiations.

In the April 12 session, the Union requested that the Employer convert its figure regarding the savings per tire of the Employer's proposal to the amount saved per hour. The Employer said that it would get the Union that information.

2. Local supplements at the Master Table

As of April 15, the parties had agreed only on a few minor provisions. In the April 15 session, Ramsey handed a letter to Sellers across the table. The letter stated that the Employer would no longer continue the Articles of the 1991 agreement that provide for separate local supplement negotiations. It also stated that, starting immediately, any negotiation of plant-specific issues must take place at master negotiations and that the Employer no longer authorized the local plants to engage in negotiations. At the same session, Ramsey delivered to Sellers the Employer's second proposal, which was the same as its first proposal, except that the Employer had removed all references to local supplements.

On April 18 Sellers handed Ramsey a letter demanding bargaining over any changes from the existing agreement, including the elimination of the local supplements. For several sessions after this exchange of letters, the parties discussed the issue of the negotiation of local supplements. Both the Union and the Employer each continued to adhere to their positions on this issue. Jeff Doornenbal, the Des Moines Local president, protested to Ramsey that he did not want employees at other plants to vote on his supplemental issues and he did not care about the local issues at the other plants. The Employer maintained the position, in accord with its November 16, 1993 letter, that the parties have only one master agreement with local appendices. Starting on April 15, it refused to participate in six separate supplemental negotiations.[(4)] The parties then discussed the logistics of negotiating the supplements at the master table. To date, the parties have not agreed on whether their practice of separately negotiating the local supplements will continue.[(5)]

From April 15 on, the parties, while continuing to disagree on whether they would later negotiate local supplements, discussed the Employer's second proposal. As the parties reached the portions of the Employer's proposal dealing with plant-specific language, it brought to the table various members of local plant management to address the issues in each plant. On April 21,

the Employer offered to send a summary of the changes on the local supplement language to each of the plants for review by the Local people. It is unclear whether either party pursued this alternative.

In the April 20 session, Sellers complained about the "time constraints" that the parties were under and that the Employer's proposal, particularly in light of the changes in the negotiation of the supplements, asked for too many changes to consider in such a short time. Sellers added:

I don't want you to misconstrue what I said as thinking that we are unwilling to listen to your proposals. We still need to respond to them. They're your proposals so go ahead and present them any way you want.

Ramsey replied: I've said several times that we have made every effort to identify all of the changes to the proposal. We tried not to mislead you. We started this process back in early January and will take whatever it takes to reach an agreement.

In response to Sellers' complaints about bringing the supplements to the master table, Ramsey stated that he objected to the idea of six separate agreements covering the one bargaining unit.

Later on, another Union representative, James A. Pope, complained that the Employer had not "left any articles of the existing agreement unchanged." (emphasis in original) Ramsey replied:

We don't have all the answers and we have made all attempts to address. We will certainly accept any ideas you have that are willing to address the Company's competitiveness.

During the same discussion, Sellers said:

When you talk about cooperation, your idea of cooperation is for us to agree to your proposals. That's the feeling we're getting and if that's not so, you better show us where we're wrong.

Ramsey: Well, uh, I think and I'll use Roger's example on the 12 hours [continuous operations] . . . we said from the start that we would look at an alternative to the 12 hour shift schedule. . . . Again, we are willing to look at what will get this Company more productive and more competitive. . . .

3.Parties negotiate contract extension; Union presents second proposal

On April 21, the Employer agreed to the Union's proposal to extend the 1991 master agreement on a day-to-day basis after the April 24 expiration date, with either party having the power to terminate the agreement with five-day advance notice.

On April 22, the Union informed the Employer that, while it had intended to go through the Employer's proposal line by line, because of the scope of the proposal and because it was presented as a whole package, the Union was rejecting the Employer's proposal in its entirety. The Union then presented its second proposal, which was essentially an expanded version of its March 22 outline proposal. In presenting this proposal, the Union stated that it reserved the right to change its proposal to reflect the pattern, which the Goodyear negotiators would set.

On April 23, the Union and Goodyear reached a tentative agreement.[(6)] On April 25, the Union's President formally presented the Goodyear package to the Employer. The President stated that there was now a "pattern" which he was also presenting to the remaining company in the chain negotiations, Uniroyal/Goodrich/ Michelin. Ramsey again responded that the Employer was at a competitive disadvantage, and it would continue to address its "compelling need to change" in the areas of health care, plant capacity, time away from work, pay increases tied to performance, and refining the current agreement to promote productivity and flexibility.

4.Employer presents third proposal

On April 29, the Employer addressed the tentative Goodyear agreement. Ramsey stated that the Goodyear terms would: cost

the Employer $124 million; increase the cost per tire by $2.50; and require a 29% improvement in productivity in order to offset those costs. The Employer then gave the Union its third proposal. In this third proposal, the Employer increased life insurance benefits, accident and sickness benefits, vision plan benefits, and the medical comprehensive lifetime maximum, all consistent with the Goodyear settlement. Following the receipt of the Employer's third proposal, Sellers acknowledged that the Employer's proposal constituted "some movement," but not toward reaching an agreement with the Union. Sellers said that the Union "will not enter into [an] agreement that does not address the employees we represent or that does not follow pattern."

5.Union rejects Employer's third proposal; presents its third proposal; parties take two-week break

On May 4, the parties met again. Sellers, going through the Employer's third proposal section-by-section, noted again that the Employer had made some movement in several areas and "came up to pattern." The Union, however, rejected the Employer's third proposal in its entirety, again describing it as a package proposal. The Union then presented its third proposal. Following the Union's presentation of its third proposal, the Employer indicated disappointment in the Union's proposal and asked to take a break from bargaining for a week.

In the interim, the parties exchanged letters concerning the status of the bargaining and their agreement not to negotiate through the media. On about May 15, there was a second tentative Goodyear agreement reached.

Almost two weeks later, on May 17, the parties resumed bargaining. The Union handed out a summary of the second tentative Goodyear agreement. Sellers told Ramsey that the Goodyear summary "represents pattern. Now we have to figure out how the hell to get there." At the Union's instigation, the parties stopped their note-taking and openly discussed the issues. The parties reached no agreement on the issues.

6. Parties discuss continuous operations

On May 19, the parties reconvened. They had an extensive discussion regarding the Employer's proposal regarding continuous operations. The parties discussed the different types of continuous operations currently in place at other tire plants. Ramsey offered to sit down with the Union and share information regarding continuous operations that work. When Sellers stated that he thought they "can work out a 7 day operation at each location," Ramsey stated that together they could "decide what would work at each location." The Union expressed doubts that any 7-day operation would be accepted by its membership. The parties were unable to reach any agreements on the issue. The parties agreed to take a break to meet separately and resume on May 24.

On May 24, Ramsey began the 25-minute meeting by asking for the news on the Goodyear negotiations. Sellers replied that, while some plants had voted already, other plants were still voting on the tentative agreement.

Ramsey:I hope you feel we have been patient and respectful of the [Union] system. The Goodyear package doesn't mean much to us unless we can fit it in to our needs. Feel we're at a competitive disadvantage until we can address our problems. . . . I had thought that we would reach an agreement and implement 7-day operations July 1. . . . I've made decision to break camp until we can have meaningful discussion on [Employer's] problems.

Sellers: You made reference to the way we do things, and I understand, but it's not just the [Union] - it's the way it was done in the past. This situation is unique. We want to focus on our negotiations, as do you. We may not agree on the focus; so be it. You are not the target but we do need to understand the pattern. Once the pattern is established, we'll come after it. . . .

Ramsey:We will focus on [the Employer], not the pattern - the same as we have stated for months. We will look out for the successor of [the Employer]. We both want this.[(7)]

Both parties agreed to leave communication lines open and come back together when they agreed that further talks would be worthwhile.

7.Parties one-month break; Employer tells the Union of a fourth proposal

After May 24, no further bargaining sessions were scheduled pending ratification of the Goodyear agreement. The next formal meeting between the parties was on June 29.

On June 12, Ramsey called Sellers and asked him and Ken Coss to meet with Ramsey away from formal negotiations. At this meeting, which occurred on June 22, Ramsey orally described to Sellers and Coss the key elements of a revised Employer proposal, giving them a copy of it. The parties agreed to convene for negotiations on June 29.

8.Negotiations resume; Employer presents fourth proposal, last/best offer

In the June 29 meeting, Ramsey formally submitted to the Union the Employer's fourth proposal, which it introduced as a "Last Best Offer." This offer differed from its previous proposal, including with regard to the following items:

·Performance based pay plus - allows employees to share in gains resulting from production surpluses when plant production surpasses inflation rate;

·Pension: increase of $3 (equivalent) monthly (to $33) through a defined contribution by the Employer to each employee's 401 (k) plan; also divert the equivalent of $4 from COLA to 401(k) plans;

·a transitional termination pension plan for older employees who might retire before their 401(k) plan is fully funded; and

·provided an alternative for employees who wished to avoid, for the short term, health care premiums in return for foregoing a 401(k) match from the Employer.

With specific regard to the pension plan, Ramsey stated: "The Goodyear approach is out of the question. We're looking at somethings [sic] similar to [chain member] Uniroyal Goodrich."

After Ramsey explained the proposal, the following exchange took place:

Sellers:This offer is called by two different terms . . . Last Best Offer and Last Best Final Offer. I'd like to know how you characterize this."

Ramsey:We feel these changes are a roadmap to an Agreement. Where this leads, as I hope, is to an Agreement.

Sellers:Is this offer negotiable?

Ramsey:We would talk about anything you may want to talk about. We have spent the last 3 months going over the issues and I guess I need to ask you what you mean by negotiable.

Sellers:You said you expected a response on or before July 7. I'm the spokesman for this negotiating committee, and I'm not going to negotiate over the telephone. Whatever we do is going to have to be done across the table.

Ramsey: I understand that.

Sellers:I'd say that the 12 hours [continuous operations] is one of the key issues. . . . I have a hard time understanding why you spend money [on a consultant firm to study continuous operations] when you think you've already got the best plan . . .

Ramsey:We have no opposition to making refinements.

Sellers:I like to see what they have . . . maybe it will make more sense.

9. Employer's Last/best/final offer

On July 7, the parties reconvened for negotiations. Sellers opened the meeting by announcing that the Union would present a new pension and insurance proposal later that day:

Sellers:In regard to our P & I proposal this afternoon, I want to make it clear that we intend to negotiate and match the improvements in the Goodyear Agreement. With regard to your last proposal, is that, in effect, your final offer.

Ramsey:That is our final offer. This is, in fact, our final offer and the Company's position is the same.

Sellers:Is your offer negotiable?

Ramsey:As I said, I'm willing to listen to any proposal, but this is our final offer. There's nothing more for the Company to give. The only response we've got in the past 2 months is Goodyear pattern. If

all you can talk about is the Goodyear Pattern, there's not much we can talk about.

* * *

Sellers:As I've explained to you before, we're willing to negotiate changes to the existing Agreement. Every proposal you have made by your method of counting. Your last proposal is a revision to proposal #3. What you term as a proposal is a complete rewrite of the Agreement and we've told you from the beginning that we're not willing to negotiate in that fashion.

Your final proposal is so far from the current Agreement and encompasses so much, it's hard to grasp even 1 item because you address it from so many different ways.

Ramsey:We have, in fact, tried to take the existing contract and put it into a form that everyone can read.

Sellers:In our opinion, each time you made a Revised Proposal, it necessitates proofreading the entire Agreement to see what was changed and what wasn't. This has been your concept throughout these negotiations . . . it's been all or nothing.

* * *

If you are willing to meet the economic pattern of Goodyear, we would be willing to address some of the issues you've mentioned.

* * *

That brings us to where we go from here. We are prepared to give you a letter revoking our day-to-day Agreement. We've left the time blank, but our intent is to make it effective at 12:01 a.m., July 12, 1994.

Ramsey:As you know, in any business, you have to make decisions. We still need to make changes to meet the Company's needs. We attempted to meet what our competitors (Goodyear and Uniroyal Goodrich) have done. I'm surprised that you maintain that we must meet the Goodyear pattern. . . .

Sellers:We want to make it clear that we are here and available to meet and negotiate right up to the expiration date.

Ramsey:On health care . . . [w]e are in a position now to share costs. Our proposal is similar to Goodyear or [Uniroyal/Goodrich/]Michelin's.

Sellers:I made it clear from the onset that our position is the Goodyear pattern.

10.Union suggests mediation; numerous issues outstanding

On July 8, the parties met and primarily discussed a lock-out/tag-out proposal made by the Union.[(8)] At the end of the session, Ramsey repeated that it did not see much need to meet any further. The Union invited the Employer to meet with the federal mediator who had been in touch with the parties since April. On July 9, the chief spokesmen and their back-ups from each party met with the mediator to discuss the issues on which the parties differed. According to the Union, those issues were:

·pension
·insurance
·continuous operations
·work rule changes
·paid time away from work
·no fault absentee policy
·performance based pay/COLA
·holidays
·vacations
·negotiation of local supplement.

The Union again attempted, without success, to narrow the Employer's demands. Further, the Union repeated that, if the Employer had to have every item talked about in negotiations, then the Union did not think it could be done. Ramsey stated that the Employer "was pretty much where it needed to be." There was no progress, and the federal mediator requested that the same representatives meet again the next day.

The next day, July 10, the Employer sent a different member of its bargaining committee, not the chief spokesman or his back-up. This representative told the Union he was prepared only to discuss an orderly shut down of the plants when the strike started on July 12.

11. The strike begins

On July 12, the strike began at all of the unit facilities, except for Russellville, where the supplement remained in effect. The strike continues to date. On July 28, the Employer informed the Union that it had rejected the Union's lockout/tagout proposal. On August 12, the Employer wrote the Union stating that the Employer intended to implement its last/best final offer as a result of impasse. The Union responded to this letter on August 15, stating that the Union was prepared to negotiate at any time and would address issues raised by the negotiations. The Union further indicated that it was the Employer's insistence that all items in their proposal needed to be addressed which was keeping the parties from reaching an agreement. As of August 18, the Employer began implementing its last/best/final offer.

In November 9, prompted by a request from the FMCS, the Union sent a letter to the Employer reviewing and responding to several of the issues in dispute between the parties. In this letter, the Union modified and withdrew many of its proposals. Since that letter, the parties have met on several occasions, and negotiations continue.

ACTION

In agreement with the Region, we conclude that it should dismiss each of the instant charges on the basis that, based on the totality of circumstances, neither party engaged in surface bargaining, as discussed below. Moreover, the evidence supports the finding that the parties were at impasse when the Employer unilaterally began to implement its last/best/final offer. Finally, there is insufficient evidence to warrant the issuance of complaint on any of the remaining allegations.

I. Neither the Employer nor the Union engaged in surface bargaining.

The Applicable Law

Section 8(d) of the Act does not require parties engaged in collective bargaining to agree on their respective proposals. Rather, the parties must show "more than a willingness to enter upon a sterile discussion of union-management differences."[(9)] The

parties must bargain with open and fair minds and with the purpose of reaching agreement.(10) The parties are "obliged to make some reasonable effort in some direction to compose [their] differences. . ."(11) A "take it or leave it" attitude, while not per se violative,(12) is evidence of bad faith.(13)

A bargaining posture which is calculated to insure that bargaining will be futile is inconsistent with good faith bargaining.(14) Accordingly, it is necessary to scrutinize a party's overall conduct to determine whether it has bargained in good faith, or whether it is endeavoring to frustrate the possibility of arriving at any agreement.(15) The presence or absence of the intent to find a basis for agreement required by the duty to bargain in good faith set out in Section 8(a)(5) and 8(d) of the Act "must be discerned from the record."(16)

Bad faith bargaining may be evidenced by a failure to provide justification for a bargaining posture.(17) Further, withdrawal or revision of proposals may evidence an intent to frustrate agreement. However, in determining whether the change in proposals is evidence of bad faith, the Board examines the justification provided to the other party for the withdrawal or revision of proposals. Although a party's reasons need not be totally persuasive, they must not be "so illogical as to warrant an inference that by reverting to these proposals, the Respondent has evinced an intent not to reach agreement and to produce a stalemate in order to frustrate bargaining.(18)

The Board draws a distinction between lawful "hard bargaining" and unlawful "surface bargaining." A finding of bad faith bargaining may arise in part from the content of a party's proposals. The Board's examination of a party's "bargaining position and proposals relates to whether they indicate an intention . . . to avoid reaching an agreement; it is not a subjective evaluation of their content."(19) The Board does not consider whether a proposal is acceptable or unacceptable to a party. Rather, the Board will "consider whether, on the basis of objective factors, a demand is clearly designed to frustrate agreement on a collective-bargaining contract."(20) The Board looks at the totality of the Respondent's conduct, not just the proposals themselves.(21)

The Board has found bad-faith bargaining based in part on an employer's insistence on unilateral control over wages and benefits.(22) In particular, the Board will find bad faith where the proposed unilateral control puts the Union in a worse position than it would be in if it merely relied on its certification to protect employee interests.(23)

Conversely, where an employer seeks deep reductions in wages and benefits, it does not necessarily breach its bargaining obligation under the Act. Moreover, the Board will evaluate a party's proposals in light of its perceived bargaining strength.

In *A.M.F. Bowling Co.,*(24) the Board rejected the ALJ's finding that the employer had bargained in bad faith because the ALJ had relied on a "subjective evaluation of the [employer's] proposals, . . ." In that case, a new owner had just bought the employer's two-plant operation, negotiated a new agreement at one plant, and assumed an existing labor agreement at the second plant, which was to expire about three months later. Immediately after the purchase, the employer had cut expenses drastically through layoffs of nonbargaining unit employees and in other areas. At that time, the union announced its intent to terminate the agreement on the expiration date, and it requested bargaining. The Union's initial proposal called for an eight percent wage increase for each of two years and increased benefits. On the other hand, the employer's first proposal called for 24 percent wage reduction and a 14 percent reduction in fringe benefits. In addition, although its first proposal anticipated retention of a job-grade structure, the employer's second proposal included an overhaul of that structure, based on the results of an intervening study of the operation. The employer justified its call for a wage and benefit reduction and the job-grade changes by saying that it needed to become competitive in the market.

In *A.M.F. Bowling,* the Board observed that the circumstances justified the Employer's proposed "deep reductions" in wages, because the employees at the Employer's other plant had agreed to a 24% wage cut just before the sale of the business and the Union eventually showed "flexibility" toward the proposals. It stated: "[T]he Respondent viewed itself as being in a strong bargaining position and not readily susceptible to pressure to make concessions."(25) The Board cited *Concrete Pipe & Products Corp.*,(26) where it held that "[a]n employer's desire to bring its labor costs in line with its competitors, standing alone, is not an illegitimate bargaining goal."

The Instant Case

In this case, we conclude that the evidence clearly establishes that the Employer bargained in good faith and that there is insufficient evidence that the Union has bargained in bad faith. While both parties showed "a real desire to reach agreement and enter into a collective-bargaining agreement," both also are "stand[ing] firm on a position" that each "reasonably believes . . . is fair and proper or that [each] has sufficient bargaining strength to force the other party to agree." (27)

The Employer's Conduct

For the Employer's part, it presented its proposals, which admittedly called for significant changes in the collective-bargaining agreement, in a timely and comprehensive format while giving the Union full opportunity to reject, suggest changes or counter-propose alternatives.

Initially, the Employer began discussing its priorities with the Union early on, in August 1993, before formal negotiations began in March 1994. With regard to the change in the method of bargaining in this multi-plant unit, discussed in detail below, the Employer gave notice to the Union in mid-November 1993. In mid-January 1994, it presented a detailed preview of what its formal proposal would contain, offering to show the Union the business data underlying its proposal. The Employer gave evidence of why it believed that improving production was necessary. It pointed to its accumulated $911 million in losses and $2.3 billion in debt and its investment of $1.2 billion in capital. When the Union subsequently raised concerns about certain of the Employer's proposals, the Employer fully explained the items and repeatedly asked the Union to suggest alternatives to address the Employer's need for productivity improvements.

In late January the Union received the formal proposal, which accurately showed the items presented orally. Two weeks after that, in response to the Union's protest that the proposal was in the form of a completely re-written agreement, the Employer gave the Union a copy that it had annotated to the provisions of the existing agreement. Before master negotiations began, the Employer also attempted to begin negotiations with the officials of the Union at the local plants.

When formal negotiations on the master level began, the Employer did not engage in dilatory or other obstructive tactics at the bargaining table. Indeed, the Employer bargained with the Union 46 times over almost four months and made some concessions throughout. The Employer did not respond to the Union's request to narrow the issues by taking off the table any provisions that it did not need. Nevertheless, the Employer was open to, and did, discuss with the Union each of the matters in the Employer's proposal that the Union raised. On April 5, for example, Sellers objected to the breadth of the Employer's proposals. For several sessions, the Employer presented its P & I specialist to intelligently discuss that area of the proposed agreement. The Employer and the Union also had a full discussion over the permissive subject of the negotiation of local supplements and later discussed the continuous operations proposal at length. As noted below, when the Union complained of time constraints on the negotiations, the Employer quickly signed off on the Union's proposal to extend the existing contract.

While the Union contended that the Employer only offered an "all-or-nothing"/"take-it-or-leave-it" approach, the Employer did not make any such statements and continued to invite the Union's input on its proposals. On the other hand, *the Union* made it clear that it was not going to consider proposals that were outside of the framework of the existing agreement, unless they approached the provisions in the pattern agreement.

On April 29, May 4, and June 29, the Union admitted that the Employer had made "some movement" in its third and fourth proposals. The Employer made these two proposals to respond to the provisions of the pattern, as it appeared at that time. The Employer explained in its June 29 proposal that it preferred to follow the variety of the "pattern" that the Union had given chain member Uniroyal Goodrich.

With regard to the content of the Employer's proposals, the Union contends that the proposals contained concessionary provisions. That was not borne out by the evidence. Instead, it appears that the Employer designed its proposal to re-allocate the economic terms so as to attain its goal of rewarding employee productivity and eliminate automatic wage increases locked in to increases in the cost of living. In any event, there is no basis to find that the Employer's demands were "clearly designed to frustrate agreement." (28)

Finally, there is no evidence that the Employer acted in a manner that surprised the Union or caught the Union unaware of what the Employer's proposals would be. The Employer answered the Union's April 20 protest about the "time constraints" limiting the Union's ability to deal with the numerous changes by agreeing to extend the contract indefinitely while negotiations proceeded. That extension continued for three-and-a-half months, until *the Union* gave its five-day termination notice on July 7.

Based on this analysis, the evidence shows that the Employer bargained in good faith.

The Union's Conduct

For the Union's part, while it stood firm on its goal of negotiating within the framework of the existing agreement, it showed some flexibility within that framework. Further, given the context of demands for significant changes in both the 30-year old practice by which the parties' agreement would be determined and in the make-up of that agreement itself, the Union did not act in such a way as to frustrate agreement on a collective-bargaining agreement.[(29)]

Admittedly, the Union's goal was to retain as much of the existing agreement as possible. As the Union informed the Employer many times during negotiations, the existing agreement was one that had served them well in the past years. Moreover, the Union's Locals valued the autonomy that the 30-year-old master agreement/local supplement framework allowed them. In addition to those factors, the Union also considered valuable, both for its efficiency and effectiveness from the Union's perspective, the parties' long-standing tradition of following the pattern established by the chain bargaining process. The Union considered any change in any of these aspects of the collective-bargaining relationship to be repugnant to employees' future well-being.

As the Union admitted in its December 2, 1993 letter, the bargaining unit includes only the Employer's six plants. It is not a multi-employer unit, i.e., the chain bargaining arrangement is not included, and conversely, the individual plants are not separate from the larger unit. Accordingly, the Employer legally can limit its bargaining to the six-plant unit.

Based on that conclusion, the evidence, on the face of it, would support an argument that the Union insisted to impasse on the nonmandatory issue of adhering to the pattern contract. On the other hand, there seems to be no cases holding that a union's insistence on a pattern agreement, based on a history of pattern bargaining, is unlawful. Accordingly, given the long tradition of joint bargaining and the completely re-written proposed agreement that the Employer put forward, the Union's maintenance of a firm stand against the Employer's proposal should not support issuance of complaint in this case.

II. The parties were at impasse when the Employer implemented parts of its proposal.

Applicable Principles

The Board has defined an impasse in negotiations as "when the parties are warranted in assuming that further bargaining would be futile."[(30)] "Both parties must believe that they are at the end of their rope."[(31)]

The Instant Case

Applying that precedent to this case, we conclude that there was an impasse before the Employer implemented part of its last/best/final offer in mid-August. First, the parties had met in formal negotiations in 46 sessions over a three-and-a-half month period. In those sessions, despite the Union's contention to the contrary, there was a full exchange of opinions and ideas on the major issues dividing the parties. The Employer had invited the Union to propose alternatives to its proposal to re-write the parties' agreement. Conversely, the Union had sought Employer proposals in the framework of the existing agreement.

During the negotiations, on at least three occasions, the Union had rejected the Employer's proposals in their entirety. In the June 29 negotiation session, in the context of presenting the Employer's pension proposal, he unequivocally stated: "The Goodyear approach is out of the question." On July 7, nevertheless, Sellers opened the meeting with this statement:"[W]e intend to negotiate and match the improvements in the Goodyear Agreement." Ramsey responded:

There's nothing more for the Company to give. The only response we've got in the past 2 months is Goodyear pattern. If all you can talk about is the Goodyear Pattern, there's not much we can talk about.

Ignoring the Employer's consistent bargaining posture against negotiating in the framework of the existing agreement, Sellers made clear that the Union's willingness to negotiate was limited:

As I've explained to you before, we're willing to negotiate changes *to the existing Agreement*. . . .

What you term as a proposal is a complete rewrite of the Agreement and we've told you from the beginning that we're not willing to negotiate in that fashion.

Sellers proposed again what the Employer had just unequivocally rejected:

If you are willing to meet the economic pattern of Goodyear, we would be willing to address some of the issues you've mentioned.

Sellers gave the Employer the requisite five-day notice of termination of the contract extension for July 12. He then stated the deadline of Union availability for negotiations:

[W]e are here and available to meet and negotiate right *up to the expiration date*.

Finally, Sellers punctuated the Union's consistent position, repeating what the Employer so clearly found to be repugnant:

I made it clear from the onset that our position is the Goodyear pattern.

The evidence shows that the issues remaining on July 9, when the parties met with a mediator, were the same as those that existed between them at the commencement of the talks. Moreover, after the last bargaining session, over one month passed before the Employer initiated its unilateral implementation. During that time, neither the Union nor the Employer thought it was worthwhile to re-start the negotiations. Thus, when the Employer and the Union parted on July 10, neither expected that further negotiations at that time would advance the cause of reaching agreement. Surely, over one month later at the date of implementation, with no negotiations occurring in the interim, both parties had "reached the end of their rope."

Given all of the above, the Region should dismiss the Section 8(a)(5) allegations regarding the unilateral implementation of the Employer's final proposal.

III.The Employer's removal of the Local issues to the Master Table was not unlawful.

As stated above, even if the parties to a multi-site relationship in the past have permitted certain issues to be bargained on a local site level, no party has a continuing obligation to bargain in that arrangement.[(32)]

Given that clear precedent, the Employer's insistence in this case on removing the issues from the local plants to the master table is not unlawful. That allegation should be dismissed, absent withdrawal.

IV.The Employer did not engage in unlawful direct dealing with the employees.

The Union alleges that, while the negotiations have been underway, the Employer has been engaging in direct dealing with the employees by its letters, recorded phone messages, and a video sent to all employees.

These communications contained information on the progress of the talks and the content of the Employer's proposals. The letters, recorded messages, and video accurately state the Employer's bargaining positions and proposals. None of the communications were coercive, and they do not suggest that employees should deal directly with the Employer over terms and conditions of work. All information provided to the employees was what the Employer had previously provided the Union at

the bargaining table. Further, the communications did not occur in the context of any unlawful conduct at the bargaining table. They therefore were not an attempt by the Employer to either frustrate the bargaining process or avoid its statutory bargaining obligations.[(33)]

IV.The Employer did not unlawfully refuse to furnish information requested by the Union.

Supplemental Facts

Prior to and during negotiations the parties requested and provided reams of information. On April 12 the Union asked the Employer to convert to a dollar-per-hour figure, its contention that its proposals would cut the cost of each tire by $1.50. At the time, the Employer said that it would obtain that figure for the Union. The Union orally asked for this information again on April 13 and by letter on July 7.

On July 13, the Employer responded to the above request by letter. The Employer provided a breakdown of the cost per tire of proposed increases in employee benefits and the estimated cost savings per tire from the final proposal. In addition, the Employer provided information on the average wages per hour, average benefits per hour, and annualized wages and benefits under the current and proposed contract for the "average" tire plant employee. Moreover, the Employer had offered to allow the Union to review the raw data upon which its calculations were based. The Union did not pursue that offer. The Employer states that it does not keep the requested information in that form.

Conclusion

We conclude that the Employer did not unlawfully refuse to provide the requested information. The Employer made available to the Union ample information from which the Union could have derived the calculation of cost per hour. That fully satisfies the Employer statutory obligation. The Regions should dismiss, absent withdrawal, the Union's allegation.

V.The Union did not unlawfully insist to impasse on, or unlawfully file grievances to force, a change in scope of the bargaining unit.

The Union proposed to include four existing facilities in the master unit and also took the position that the parties should continue to negotiate on a local level over various issues. Both have to do with the scope of the unit, changes to which are permissive subjects of bargaining.

While it is clear that insistence on a permissive subject to impasse violates the Act, the mere existence of unresolved items at the point of impasse does not necessarily mean that each of the unresolved items caused the impasse. In order to evaluate whether a party has insisted to impasse on a particular nonmandatory subject of bargaining, the Board has looked to whether agreement on the mandatory subjects of bargaining are conditioned on agreement on the nonmandatory subject of bargaining.[(34)] The Union did not set forth either their proposal to include the four additional plants in the master agreement or their position on local supplemental negotiations as a condition of agreement on the mandatory subjects of bargaining. These issues were just two of many unresolved issues at the time the parties reached impasse.

Furthermore, the Union Locals' pursuit of grievances to enforce the disputed provision of the contract is not unlawful.[(35)]

Thus, the contention in the grievances that in the contract the Employer has agreed to negotiate over the inclusion of the plants at issue is not clearly baseless.

VI.The Union did not unlawfully refuse to furnish information to the Employer.

The Union fully satisfied its obligation to provide information to the Employer. Contrary to the contention of the Employer, the information regarding the lockout/tagout experience at plants operated by other companies was not relevant to bargaining with the Union in this bargaining unit. The Union therefore had no obligation under the Act to comply with the Employer's request in this regard.

VII.The Union did not unlawfully inject racial/national origin prejudice into the bargaining.

After the strike began on July 12, the Union and its supporters have made derogatory comments regarding the Japanese ownership of the Employer and the Japanese in general. However, aside from the Union's portrayal of the labor-management struggle as the "War of '94," which is neutral on its face, there is no evidence of any derogatory comments regarding the Japanese before the strike. Accordingly, in this regard there is insufficient evidence to support a bad faith bargaining complaint against the Union.

CONCLUSION

Based on the foregoing analysis, the Region should dismiss the charges, absent withdrawal, against both the Employer and the Union.

B.J.K.

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[1] In 1983 Bridgestone, a Japanese-owned company, acquired Firestone's LaVergne, Tennessee facility. Bridgestone later acquired other Firestone facilities, and by 1988 it had acquired the entire Firestone business.

[2] All dates hereinafter are in 1994 unless otherwise noted.

[3] Employer's minutes, 3/28/94, (2 PM) at 6. Most of the following excerpts of the negotiation sessions are from the Union's notes, which generally agree with the minutes/notes taken by the Employer. Where the Union minutes/notes lack specificity and we refer to the Employer's minutes/notes, we will so indicate.

[4] In an exception to this, the parties agreed to continue the Russellville supplemental agreement, which by its terms continues to be effective from April 30, 1993 to April 30, 1997 for some provisions and to April 30, 1998 for other provisions.

[5] As of November 9, the Union apparently maintained its position that various issues should be negotiated on the local level. In an attachment to a submission to the General Counsel dated March 21, 1995, the Union states that its current position is: "Supplements will become a part of the master agreement and will be negotiated prior to or concurrent with the Master Agreement." In this submission, it is not clear at which level the Union would negotiate the supplements.

6 The first Goodyear tentative agreement was rejected by the Union membership. On May 17, the Union presented a second Goodyear tentative agreement to the Employer. The second tentative agreement contained improvements for employees from the first in respect to retiree medical eligibility, prescription drug benefits, and medical benefits. The second Goodyear tentative agreement was ratified sometime between May 24 and July 7.

[7] Employer's minutes, 5/24/94, p.1.

8 This relates to implementing the OSHA standard for rendering a machine non operational during the performance of servicing and maintenance tasks.

[9] *NLRB v. American National Insurance Co.*, 343 U.S. 395, 402 (1952); *Atlanta Hilton & Tower*, 271 NLRB 1600, 1603 (1984).

[10] *NLRB v. Herman Sausage Co.*, 275 F.2d 229, 231 (5th Cir. 1960), reh'g den. 277 F.2d 793 (5th Cir. 1960); *Majure Transport Co. v. NLRB*, 198 F.2d 735, 739 (5th Cir. 1952).

[11] *Atlanta Hilton & Tower*, 271 NLRB at 1603, quoting *NLRB v. Reed & Prince Mfg. Co.*, 205 F.2d 131, 135 (1st Cir. 1953), cert. den. 346 U.S. 887 (1953).

[12] *Industrial Electric Reels*, 310 NLRB 1069, 1072 (1993).

[13] *88 Transit Lines*, 300 NLRB 177, 178 (1990), enf'd 937 F.2d 598 (3rd Cir. 1991).

[14] *NLRB v. Herman Sausage Co.*, 275 F.2d 229, rehearing denied 277 F.2d 793 (5th Cir. 1960).

[15] ***Atlanta Hilton and Tower*, supra.**

[16] ***General Electric Co.*, 150 NLRB 192, 194 (1964), enfd. 418 F.2d 736 (2nd Cir. 1969), cert. denied 397 U.S. 965 (1970).**

[17] **See, e.g., *John Ascuaga's Nugget*, 298 NLRB 524, 527 (1990), enf'd in rel. part, 968 F.2d 991 (9th Cir. 1992).**

[18] ***Hickinbotham Bros. Ltd.*, 254 NLRB 96, 102 (1981); *Barry-Wehmiller Co.*, 271 NLRB 471, 472 (1984).**

[19] ***Litton Microwave Cooking Products*, 300 NLRB 324, 327 (1990), enf'd 949 F.2d 249 (8th Cir. 1991), cert. denied 112 S.Ct. 1669.**

[20] ***Reichhold Chemicals (Reichhold II)*, 288 NLRB 69 (1984), aff'd in relevant part 906 F.2d 719 (D.C. Cir. 1990); *Central Management Co.*, 314 NLRB 763, 771 (1994).**

[21] ***A.M.F. Bowling Co.*, 314 NLRB 969, 973 (1994).**

[22] ***A-1 King Size Sandwiches*, 265 NLRB 850 (1982), enf'd 732 F.2d 872 (11th Cir. 1984), cert. denied 469 U.S. 1034; *John Ascuaga's Nugget*,.**

[23] ***A-1 King Size Sandwiches,* 265 NLRB at 859; *Harrah's Marina Hotel and Casino,* 296 NLRB 1116 (1989); *Radisson Plaza Minneapolis,* 307 NLRB 94, 95-96 (1992), enf'd 987 F.2d 1376 (8th Cir. 1993).**

[24] **314 NLRB at 973.**

[25] **314 NLRB at 975 (citing *Anaheim Plastics,* 299 NLRB 79, 100 (1990) (note 23: employer "adhered to its economic proposals based on its proposal .**

[26] **305 NLRB 152, 153 (1991), enf'd 983 F.2d 240 (D.C. Cir. 1993).**

[27] ***Industrial Electric Reels,* 310 NLRB at 1071-1072 (citing *Atlanta Hilton & Tower,* 271 NLRB at 1603).**

[28] ***Reichhold II,* 288 NLRB 69.**

[29] **Id.**

[30] **Id. at 978 (citing *Pillowtex Corp.*, 241 NLRB 40, 46 (1979)).**

[31] **Id. (citing *PRC Recording Co.*, 280 NLRB 615, 635 (1986), enf'd, 836 F.2d 289 (7th Cir. 1987)).**

[32] ***Reichhold Chemicals*, 301 NLRB at 1228 (and cases cited there).**

[33] **Cf. *General Electric Co.*, 150 NLRB 192 (1964) (disparagement of the union through employer campaign among employees).**

[34] ***Taft Broadcasting Company*, 274 NLRB 260, 261 (1985) and cases cited therein.**

[35] ***Bill Johnson's Restaurant v. NLRB,* 461 U.S. 731 (1983).**